

Present: Peterson, DeNofa, Walsh, Stambaugh, Betesh, Dodge, Waterbury  
Forrester (Attorney)  
Cranmer (Planner)  
Absent: Canonico

New member Elizabeth Waterbury took the seat of Mr. Hartmann as Alt #1 & was sworn in by Mr. Forrester.

**Election of Chairman - remainder of 2008**

A motion was made by Mr. DeNofa, seconded by Mr. Walsh nominating Mrs. Peterson as Chairman, for the remainder of 2008, with no further nominations

Roll Call:

Affirmative: DeNofa, Walsh, Stambaugh, Betesh, Dodge, Waterbury

Negative: None

A motion was made by Mrs. Peterson, seconded by Mr. Walsh nominating Mr. DeNofa as Vice Chairman, for the remainder of 2008, with no further nominations

Roll Call:

Affirmative: Peterson, Walsh, Stambaugh, Betesh, Dodge, Waterbury

Negative: None

Chairman, Mrs. Peterson, called the meeting to order at, 7:30 p.m.  
All saluted the flag, and the presiding officer's statement was read.

**Minutes:**

A motion was made by, Mr. Betesh, seconded by, Mr. Dodge to adopt the minutes of the August 6, 2008 meeting as submitted. All approved. Abstained: Waterbury

**Planning Board Representative:** no report

**Correspondence:**

- Request from Mr. Falvo to carry the Walgreen's adoption to the 10/1/08 meeting, since he did not have an opportunity to review the resolution.

**Unfinished Business:**

**Mr. & Mrs. Michael Ernst:**

Bl: 53, Lot: 1

**Adoption of Resolution**

A motion was made by, Mr. Walsh, seconded by Mr. Betesh to adopt & memorialize the resolution of approval for a 2<sup>nd</sup> story addition, 2 car garage opening the street, and circular driveway as submitted.

Roll Call:

Affirmative: Peterson, Walsh, Stambaugh, Betesh

Negative: None

**Antoinette Musorrafiti:**

**Continuation of Hearing**

Bl: 69.04, Lot: 24

Mr. Forrester announced that this matter was carried from 7/2/08 without further notice.

Mr. John Giunco, Esq represented the applicant.

Mr. Giunco explained that at the last hearing his client was requested to make some modifications, and they did have an opportunity to meet with the neighbors, but there has not been any resolution with the neighbors.

Mr. Giunco gave a brief overview of the applicants request for the building coverage variance to permit a cover over an existing pool located in the back yard for use over the winter months. The variance is for building coverage; all other requirements are in requirements with the Borough's Zoning Requirements. Their was testimony from Mr. Gordon Gemma, Planner and Mr. James Kennedy, Engineer with reference to the design and buffering to the neighbors. The neighbors have objected to the view of the "bubble" from their 2<sup>nd</sup> floor. It is his client's intent to enhance the existing landscaping and to supplement the landscaping to provide a complete buffer to the adjoining property owners. There has been testimony on the drainage and Mr. Kennedy will testify on the existing conditions and the proposed buffering.

Mr. Forrester stated that after the board heard testimony a decision was made to uphold the decision of the Zoning Officer that the pool cover is in fact an "accessory building". Mr. Giunco agreed, originally this application was for an appeal of the decision of the Zoning Officer, and after determination of the board they now are seeking a variance for relief of the building coverage to permit the pool cover.

Mr. James Kennedy, Engineer, testified that he did visit the site before and after rain storms during the summer without the "bubble" up. He did look for signs of erosion and instability of the landscape materials and did not find any signs of either. This is a concrete pool and with a concrete surround. The enclosure provides the wintertime cover to the existing pool, and without the "bubble" there would be an enclosure over the pool anyway. His opinion at this time is that they couldn't find any signs of run off with regard to the cover on the site to the adjacent neighbors.

Mr. Betesh asked how would he be aware of any signs of erosion if he looked at the site during the summer? Mr. Kennedy explained that there would be signs of erosion, since the erosion doesn't go away. If there was a run off issue or a transport of soil or landscape material the evidence would still be there.

Mr. Betesh asked if the pool is considered impervious since it holds water? Mr. Cranmer stated that the pools are considered impervious from a storm water management perspective.

Mr. Giunco asked Mr. Kennedy if he is aware that the neighbors do not want to be able to view this, and as a result his client requested that he analysis the buffering at the perimeter of the site which could affect the adjoining properties to the rear and to prepare a plan to supplement the existing buffering to provide further buffering? Mr. Kennedy said that he did have a Certified Landscape Architect on his staff examined the deciduous landscaping that currently exist on the site.

Mr. Forrester summarized the exhibits from previous meeting:

- A-1: Photos of site
- A-2: Survey from Shepherd Engineering 12/2/92, includes existing improvements & Zoning Officers notes
- A-3: Enlarged exhibit of Lot: 24
- A-4: proposed buffering
- A-5: Spec on pool cover
- A-6: Aerial of area

Mr. Kennedy described exhibit A-4, with a deciduous stand of trees, shows good planting materials and poor planting materials, they are proposing to supplement the good trees with a variety of evergreen materials which will provide a seasonal all year coverage. They are proposing 10-12 American Hollies which will provide a thick buffer. They will go in and clean out the dead landscaping to allow the landscaping to survive. They are also proposing Japanese Evergreens which are smaller shrubs to provide a base for a lower screening. He feels these additions will provide a 4 seasons screening along Lot: 10. He stated along Lot: 9 & 10 there are dead Leland Cypress which will be removed and replanted, and Lot 8 carries healthy arborvitae which will provide a nice screening for Lot 8.

Mr. Giunco asked if the proposed will provide a good buffer screen at ground level for vision from an adjoining property into the applicant's yard? Mr. Kennedy said yes. He explained that the plantings will be from 10-12' and in 2-3 years the buffer will grow 6' of growth per year or 18" over 3 years. He feels that if the applicant provided a 6' solid fence it would not give the softer look and the landscaping will grow higher than the 6'.

Mrs. Peterson asked if the plan was done with the neighbors or in conjunction with the neighbors? Mr. Giunco said no, they proposed a plan and it did not satisfy them.

Mr. Walsh asked Mr. Giunco what is the time period when the "bubble" will be up? Mr. Giunco said 10/1 through 5/1, which is the time that his client would like to use the pool. If the board wanted his client to limit the time to 11/1 but the proposal is for 10/1.

Mr. Walsh asked how high the structure is? Mr. Giunco stated that it is approximately 11 ½' and they have provided a brochure to Mr. Donlon and he stated at the last meeting that it did not exceed a height of 12'.

Mr. Walsh asked Mr. Kennedy if a 12' high, over a 22' 68' pool doesn't produce any more run off or erosion than a regular pool cover? Mr. Kennedy said that it does not impact run off, this is a very well landscaped perimeter, the water runs off into the grassed area, and he saw no signs of any adverse impact from the run off.

Mr. Forrester asked if a 12' high structure doesn't cause any more run off than a pool cover does? Mr. Kennedy said no, drainage calculations are based upon a plan view impervious coverage, the height of the structure would have no impact to that.

Ms. Antoinette Musorrafiti made a statement. She feels that she has made a good faith effort to try and satisfy the neighbors, and she didn't know that they had a problem with it the entire time it was up until a week before the hearing. As a neighbor they should have spoken to her when it was up and advise her that they weren't happy. She doesn't feel that there is anything that she can do to satisfy any of the neighbors that are here tonight, since they have chosen to fight this and they may be successful. She feels that they could have spoken to her as a neighbor, and they have chosen to do that. She would like the board to consider that what she has offered to do in trying to buffer it from everyone. She has made many improvements to her property, and she feels that she is a good neighbor. Currently you cannot see into her backyard and she is planning to do that and it may take a couple of years. It will be buffered from the 1<sup>st</sup> floor but not from an airplane. She asked the board to take that into consideration.

Mr. Giunco asked Ms. Musorrafiti what is the season that she is seeking to keep the cover up. Ms. Musorrafiti explained that she must keep the pool warm and she feels that October to December wouldn't help since she still has to keep the pool warm and it would be difficult to close the pool at that time.

Ms. Musorrafiti explained that she had shoulder surgery 3 years ago and it's the best therapy for her and she swims in the pool at least 3-5 times a week, in the morning hours 5:30 am to 7:30 am.

Mr. Giunco asked what was the procedure to deflate the cover? Ms. Musorrafiti explained just turn the fan off and it deflates in ½ hr and it inflates in ½ hr from a 110 volt fan which is quiet. The cover can be left up during 30-35 mph winds; the cover is vinyl and anchored with eyebolts and cable around the entire pool. She would like to keep the pool up from 10/1 through 5/1.

Mr. Walsh asked if the color can be changed from the blue/white? Ms. Musorrafiti said no, she would have to buy a new cover.

Mrs. Peterson asked Mr. Giunco to explain his statement "right to recreate". Mr. Giunco referred to case law which refers to several cases in MLUL, "no right to a view".

Mr. Giunco explained that the Planner was cross examined at the last meeting, and is not here tonight.

A motion was made by Mr. Betesh, seconded by Mr. Dodge to either witness for questions or comments. All approved.

Mr. Joel Davies, Esq represents Mr. & Mrs. Tognola & Dr. & Mrs. Westerman  
Mr. Davies stated that he has a concern with Mr. Gemma not being present. Mr. Davies feels that Mr. Gemma's testimony was based only on the decision on the Zoning Officers not for a variance application. Mr. Forrester stated that the applicant did notice for the appeal and in the alternative a variance application.

Mr. Giunco said if the board determines that Mr. Gemma did not testify for the variance they will present that testimony. He feels that at the last meeting testimony was given on the entire application, but if the board feels that the additional testimony is necessary he will have Mr. Gemma return.

After a brief discussion it was agreed that Mr. Gemma will return for further testimony on the variance.

Mr. Forrester marked the Manufactures Brochure as A-5.

Mr. Davies asked Mr. Kennedy questions with respect to the 12' high dome, over the 22' x 68' pool, asked if there is no difference in the run off or erosion from the dome cover vs. a cover on the pool? Mr. Kennedy said that he did not witness any rain cover with the cover on the pool. Ms. Musorrafiti said that the pool is covered all year round.

Mr. Davies asked what are the set backs for the pool? Mr. Kennedy said that the set backs do not apply according to Mr. Donlon's letter and that is a question for the Planner. Mr. Kennedy said that the pool deck is 12' to the addition of the house.

Mr. Davies asked the number of plantings proposed? Mr. Kennedy said 10-12 Leland cypress, 3 - 10-12' Jersey princess American hollies, 11 - 3-4' evergreen shrubs. There is a gently grade from the developed area to the rear & corner, with a 3' elevation from the deck of the house to Lot 10 in the rear property. The pool is approximately 3' higher than the house along the rear property line.

Mr. Davies asked if the buffering of the trees will have an impact on the sound or wind coming off the top of the dome? Mr. Kennedy doesn't feel that it would have an impact on sound.

Mr. Giunco asked if there would be a cover on the pool any way? The function of the dome and the pool cover would divert the run off, would they be the same, about the same or almost the same? Mr. Kennedy said that the applicant testified that the cover is impervious and it's recognized by Zoning that it is impervious, and he did walk the site and does not expect any increase in run off as a result of the cover. It would be the same run off condition with or without the dome cover

Mr. Michael Bell, 43 Trafalgar Place, agrees that volume of water coming off the pool cover is the same that comes off the dome, but he feels that the water coming off the dome is uncontrolled vs. the solid pool cover where you have the ability to direct the water away from the neighbor's properties. Is there a probability that the neighbors are being flooded today which were not being flooded when there wasn't a dome?

Mr. Kennedy said that there weren't any signs of erosion, mulch transport or movement; he did not see any evidence of that.

Mr. Bell asked if the dome is being considered a building? Mr. Giunco said that the board determined that it was considered a building but not under the building definition. Mr. Bell asked if there is a limit on accessory structures in this zone? Mr. Forrester said that as far as he knows there isn't a limit or size limitation, but there is a coverage limitation (94.5.8B) of 25% of the rear or side yard area in any residential zone, provided that it does not exceed 16' in height. Mr. Giunco said that was not determined, only the lot coverage.

Ms. Tricia Ogden, 162 Dorchester Way, gave her concerns with the "circus tent look" and the attraction of children into the applicant's yard, and the security of entering & exiting the dome. Mr. Giunco said that his client would be willing to lock the dome to further protect anyone who wondered onto this property.

Mr. Joel Davies, Esq, asked for the MLUL section for the "Right to Recreate"  
Mr. Giunco 4055:D2G

Mr. Phil Villaluz, 141 Dorchester Way, adjacent property owner gave his concerns on the noise that is generated by wind, the dome flaps and makes a flapping noise when the wind blows up, and he has concerns with it waking up their small children. He agrees with the comments made with reference to the rain water coming off of the dome vs. a flat cover. He has seen an increase amount of ponding occurring on his property.

Mr. Forrester marked an aerial as A-6 into evidence.

Mr. Giunco asked Mr. Kennedy if he could design a infiltration area to stop any potential or possible additional run off leaving the site? Mr. Kennedy said that he has done that for impervious variance in the past and he has designed a dry well or seepage pits to handle the increase of run off, he didn't think that it was necessary for this application, but this is something he could do. Mr. Kennedy stated that there is a berm in the rear property which if it is extended and if they plant 3-4 additional arborvitaes to the north it would not allow any run off to go onto Lot 8.

Mr. Joel Davies, Esq. asked to have a mounted photo marked into evidence as 0-3 for identification only, which is a larger photo of 0-1

Ms. Nancy Lee, 7 N Park Ave, asked if the applicant will be inflating the dome prior to approvals? Mr. Giunco said that the applicant will not erect the dome until approval is granted.

A motion was made by Mr. DeNofa, seconded by Mr. Dodge to close the meeting to the public. All approved.

Mr. Forrester announced that this matter will be carried to the October 1, 2008 meeting without further notice.

Mr. Giunco stated that Mr. Kennedy & Mr. Gemma will be available for further questions.

Break: 9:00 pm to 9:15 pm. All present at roll call.

**Nevada Exchange LLC:**

795 Broad St.

Bl: 40, Lot: 10

**Outdoor Display - waiver of site plan**

Mr. Forrester announced that he has reviewed service and finds it to be adequate and the board has jurisdiction to hear this application.

Mr. Edward McKenna, Esq. represented the applicant.

Mr. McKenna described the business as a complete home furnishing store, which is open 7 days a week, 10:00 am - 6:00 pm Monday through Saturday & 11:00 am to 5:00 on Sunday. He explained that the merchandise that is on display in Shrewsbury cannot be taken from the site, the customer orders and it is shipped from the Colts Neck store.

Mr. McKenna also advised that there will not be any additional ornamental structures to be added to the site.

**Review of Planner letter dated 9/2/08**

**1.3 through 1.9:** will be addressed by Mr. Greg Kniesler, Jr. Planner

**1.9 a:** will comply with the maximum height of a fence

**b:** testimony given that the structures are on an upscale image and would not be offensive

**c:** w/c and landscaping shown on the plan

**d:** w/c and landscaping shown on the plan

**e:** w/c and there will not be any interfere with pedestrian walkways

**f:** w/c and will not be on any adjacent properties

**2.0: Site Plan Waiver:**

Mr. McKenna stated that nothing is to be done to the building they are requesting only to have the ornamental structures to be on their site or the parking lot, with a waiver of site plan

**2.1 a:** w/c structures will not be any closer than 25' to the street, side yard they will be within the 15' required by Ordinance, and within the rear yard set back

**b:** there will not be any temporary sales

2.2: they are currently at the 4.5 side yard are and will remain

2.3: Photos were supplied with the structures that are now displayed

Mr. Forrester marked the following into evidence:

A-1: Use Variance Plan, prepared by Abbington Assoc, 11/6/07

A-2: Color Rendering of A-1, dated 8/22/08

A-3: 13 Photos of existing site

2.4, 2.5: Landscape plan has been provided and they will accept any conditions imposed by the Shade Tree Commission

2.6: no additional lighting has been installed

2.7: no new construction or site improvements proposed

2.8: all non conformities will remain and will not be impacted by this application

2.9: will comply and will retain jurisdiction with the Zoning Board

Mr. Greg Bereza, Executive VP for Due Process Stables Trading Co was sworn.

Mr. Forrester asked Mr. Bereza if he agrees with all the statements made by Mr.

McKenna and that the applicant will comply with all of the representations that have been made.

Mr. Walsh asked if the use variance that is granted will remain with the property.

Mr. Forrester said yes, but the board can put limitations on the approvals that would allow outdoor storage of material for sale, which is not a permitted use. He explained that someone could go into the space and do the same thing if they comply with the conditions that are imposed as part of the variance.

Mr. McKenna said that the applicant would take a limitation on the type of materials that would be allowed on the site. They are seeking permission for an upscale display of items, they are not seeking a variance to allow a subsequent owner to come in and display any thing they want. This has been discussed with his client and they are not looking to expand the use to allow a subsequent owner to do anything else. Mr. Bereza agreed with Mr. McKenna's comments. Mr. McKenna said that they would accept a condition a limitation on what they would be permitted to display.

Mr. Betesh asked if the restriction could be limited to the ornamental structures?

Mr. Forrester explained that the retail portion of the business is done but the deliveries are made from another location. Mr. Betesh asked if that restriction could be added to a resolution? Mr. McKenna said that structures would not be picked up on the site by the customer; the structure would be delivered by his client.

Ms. Waterbury asked if any of the existing non conformities which are mentioned in

Mr. Cranmer letter apply to the permanent planting or foundation landscaping?

Mr. Cranmer said no, they apply to driveway locations, width of the driveway, perimeter buffering etc., they will not be changed by this application and if variances were issued

they would be able to be continued if something happened to the building, if the board does not grant variances for them the new site would have to be brought into compliance.

***Mr. Forrester announced that the board will carry the Montessori application to the 10/1/08 meeting without further notice.***

Mr. Frederick Kniesler, Jr. Planner/Landscape Architect, Rumson, was sworn and accepted as an expert witness.

Mr. Kniesler described the site, and referred to A-1 which identify the urns & structures, and it the intentions to leave the ornamental structures remain in the location as shown in A-1. He agreed with Mr. McKenna's comments that these displays will give the interior designers and homeowners the opportunity to see the selections which are available in the storage facility in Colts Neck, and they are delivered from the Colts Neck site.

Mr. Kniesler referred to the photos and stated that the applicant has added more evergreens into and around the planters, and additional lower plantings are proposed for the side yards to soften the look. They are using the planters as the screening between the properties rather than stockade fences. Since the entrance is located in the rear of the property having the structures down the side yards gives a courtyard effect that gives the sense of the style in the building where they only sell interior items, with the exterior items outside.

Mr. Kniesler explained that both sides of the building do not have windows, and he feels that the ornamental structures located on the sides of the building help to soften the look on both the north & south sides, which he feels adds a scenic look to Broad St.

Mr. Kniesler described the eastern portion of the property as a dense wooded area with a residential area adjacent. The applicant will plant a series of Leland cypress trees and criptomaria 8-10' to help screen the parking area, sculptures and urns from the residents. The lighting exists and the lights that face the residents are painted black and they install timers to minimize the impact of the lighting to the east.

Mr. McKenna said that he has spoken to the residents and they have requested a berm, would that be feasible?

Mr. Kniesler explained that the parking lot is level but it has been filled at one time, and the residents are higher than the parking lot and he wouldn't want to make it any higher at this time due to the root base reaching the natural grade. He feels that the plantings will be a sufficient height.

Mr. McKenna asked if there is anything that could be presented to either Mr. Cranmer or the board to shield the properties to the east. Mr. Kniesler said that he will revisit the lighting with Mr. Cranmer. Mr. Cranmer stated that the board has not heard from the neighbors with respect to the lights, but they have been estimated to be 12', colonial style fixture around 10-20 years old which are not dark sky friendly type fixtures. He would

like to hear from the neighbors and then the board can address the issue. Mr. Cranmer asked if lighting is part of this application? Mr. McKenna said no.

Mr. Kniesler addressed the use variance of outdoor storage materials & outdoor temporary displays. He stated that the applicant is not storing materials associated with a larger use i.e.: lumber or fertilizer, only ornamental urns & classic statuary used by landscape elements for any residential use within the Borough. Temporary display of goods, the urns & statues are not temporary they are meant to be a permanent site fixture; if they change a style they will change it "in kind". The use variance plan will be filed with the Borough and they will know the location of each piece. If another use came in this plan would not work and they would have to return to the board. Mr. Forrester stated that could be a condition of approval or if the nature or the character would change they would have to comply with buffering and or landscaping requirements.

Mr. Kniesler feels that the proposed use of displaying outdoor goods is not inconsistent with the goals & objections of the Master Plan of the Borough. He feels that it promotes a variety of retail uses along the B1 zone.

Mr. Kniesler stated that there are 4 areas which he feels this application supports, and why this use is particularly suited for the proposed, the urns buffer the adjacent uses, provides additional buffer to the residents to the east and additional buffering will be providing. The sculptures are spaced not to create a solid wall; the applicant will add greens to soften the look. The continuation of the urns is a low key non evasive use consistent with the commercial identify along Rt. 35. Buffering requirements and screening requirements are met with the use of the urns which block the adjacent properties.

Mr. Kniesler stated that the site is located on a major road, with a single driveway, the structures are preexisting and very unobtrusive of the roadway, the lions in the front yard are not for sale, and other businesses do place items in the front yard which come and go, but he explained that these existing pieces are ornamental in nature and reflect the scale of the building.

Mr. Kniesler stated that there are other businesses in the area which has outdoor displays, i.e. The Sport Spot with lawn sheds and furniture, Bicycle Shop, Athletes Alley, his client is not the first business to have outside display.

Mr. Kniesler feels that even though the ornamental urns and classic statutory are not listed as a permitted use they are attached to the offerings of the retail store and they are not something that can be stored inside. Since this is a unique market he can understand why the Borough doesn't list them as a permitted use. He feels that they do produce a desirable environment and they are suited for the site since they soften the highway look. He doesn't feel that the applicant is seeking to continue a non obtrusive use, with no exterior changes to the building, with the exception of the lighting and the addition of evergreen buffering to the east. The neighborhood is not being impacted and they would like to try and be better neighbors with the application. He doesn't feel that these

improve would not impair the intention of the Borough's Master Plan with this limited use.

Mrs. Peterson asked if the urns and/or statutes affect the impervious coverage of the site? Mr. Kniesler said the lot is very green in the rear and they are allowed 60% on the entire site. Mr. Cranmer said that he doesn't see any storm water issues.

Ms. Waterbury asked if the urns could be stored in the rear of the building rather than along the property line? Mr. Kniesler explained that placing them in the rear they would create a look of storing materials and a cluttered look. He feels that the existing placement has a better esthetic view. They have reduced the amount of statutes & urns from the original amount that was out on the site by 60 pieces they now have 115 pieces on the site. Mr. McKenna said the 2 lions in the front yard are part of the applicants landscaping and are not for sale but they are incorporated in 115 pieces which are available for shipping from the Colts Neck store. There is only 1 - 12' statute at the rear of the property none of the remaining urns or statutes are higher than a 6' fence.

A motion was made by Mr. Betesh, seconded by Mr. Dodge to open the meeting to the public. All approved.

Mr. Donald Pignataro 9 Buttonwood Drive was sworn, he is directly behind the site. He asked if the hours of operation will be changed from the 10-6 Monday through Saturday and 11-5 on Sunday? Mr. Bereza said no the longer hours didn't work for them. He asked if the same number of statutes will remain same, and if they will be building anything on site for these statutes? Mr. McKenna said that he noticed for display and storage to be on the safe side, but they are not adding any storage. Mr. Forrester noted that a condition could be stated that there will be no outdoor storage of inventory on the site.

Mr. Pignataro said that during the winter time all of the leaves do fall off the trees, and he doesn't have any objections to the statutes, but he does have concerns with the lighting on the site. He explained that the lights can be seen from his house even if the lights have been painted black. Mr. Pignataro stated that the lights in the rear were never on when the previous owner was in the building but for the last 2 years they have been on and they do create a glare onto his property, he sees the source of the light on both the building and down the sides of the parking lot. He doesn't want to see lighting from inside his home during the later evening hours or early morning.

Mr. Cranmer asked if the site lights will be turned off at 10:00 pm. Mr. Bereza said that he had his electricians add some timers added to the site, and he is not opposed to turning all the lights off at night, he will have his electrician there in the morning to correct any issues. Mr. Cranmer asked if the main lights could go off at 10:00 pm, but they need to identify the security lights and they do need to be shielded or a lower bulb or a building mounted light that would not impact the neighbors. Mr. Cranmer asked if the hours of the lights could be for **7:00 pm. Mr. Cranmer agreed and add security lighting, and upgrade the shields on the existing lights.**

Mr. Betesh asked if additional landscaping could be added? Mr. Bereza explained that the properties are lower and you would still see the lights.

Mr. Cranmer referred to 1.9 of his review letter as additional conditions if the board approves the application.

Mr. John Coughlin, Buttonwood Drive, gave his concerns over the lighting issues. He explained that he lives in perpetual twilight. In the past he asked to have the lights turned off, he was advised that they are needed for security. He has concerns with the timers, the lights are bright. The firehouse lights are also on all night, but the light shoots down and not as bright. Even if the lights are painted black, which doesn't do anything, the row of lights up and down the driveway are still on and bright. There was a citation issued a couple of years ago and nothing has been done. He asked if they put additional landscaping in he would like to see the line of trees come to his corner of the property line. He see all the lights on the site.

Mr. Cranmer asked Mr. McKenna if his client would be willing to retrofit all 11 lights on site to a dark sky friendly fixture? Mr. McKenna asked Mr. Coughlin if he is in the north east portion of the property? He said yes, and further up the line, that would be ideal. Mr. McKenna said that they would be willing to submit an amended landscaping plan. Mr. Kniesler said that there are a significant amount of deciduous trees in that area with a large tree canopy and evergreens may not grow under them.

Mr. McKenna asked if they do put in the additional landscaping would it be beneficial to your property? Mr. Coughlin said that he would like to see the style of light fixtures changed. Mr. Bereza said that the lights will be off at 6:00 -7:00 pm every night, he works 7 days a week and he will enforce the policy that the lights will be off.

Ms. Stambaugh stated that shutting down all the lights creates a security problem, even though they have a security camera on the site.

Ms. Robin Blair, 15 Buttonwood Drive, she would like to see lights lowered, and motion detector lights for security and the parking lights off during the day. She has concerns with the type of buffering that is proposed since criptomaria becomes huge and is slow growing, she asked where would it be placed? Mr. Bereza described the buffer that will be in the back of the parking lot going back 10'. Mr. Kniesler said that the plantings will be along the back edge of the parking lot in a former planting bed just behind the existing statuary, they are not going into the deer path or creating any more disturbance.

A motion was made by Mr. DeNofa seconded by Mr. Walsh to close the meeting to the public. All approved.

Mr. McKenna suggested that the applicant's engineer meet with Mr. Cranmer to work on a lighting plan which is acceptable to all and subject to the board's approval. The applicant will meet with the property owners to get their input with respect to the lighting.

Board members feel that the only issue that has to be worked on is the lighting issues and conditions worked into the resolution, but the issue of the existing statuary; are not obtrusive, there is existing outdoor sales on Rt. 35 which is more offensive. Both parties should meet and work out an acceptable lighting plan. As long as the Borough is protected from another applicant coming in and changing the use that would be unacceptable to the Borough or the neighbors.

Mr. Forrester recommended the following:

- Restriction that the outdoor storage is limited to what presently exists that provides a relative buffer, and if what exists today there would have to be compliance with the Borough's buffering requirements

Mr. Cranmer said that the board is granting the ability to have a permanent situation and the board should acknowledge that this would be a continuous year round event, and to allow the outdoor storage and display of materials which are offered "for sale".

Ms. Waterbury feels that the addition of the evergreens is an important factor of the display, and referred to 1.9a: the statue should be identified as being over the 6' fence requirement. **Mr. McKenna stated that nothing in excess of the maximum fence height would be permitted on the northern or southern portions of the property.**

Mrs. Peterson doesn't feel that this site is suited for this display/storage due to the side yards and the buffers are not there, she likes that the applicant is working with the neighbors with respect to the lighting & landscaping.

Mr. Cranmer stated that the applicant will turn the lights off at 7:00 pm, and he suggested that the two lights on the eastern side of the property at the corners of the parking lot be retrofitted to a non glare light or dark sky friendly light, as well as the light along the southerly side of the driveway that could give the applicant the security and the neighbors would not see the glare of the lights. He also suggested a lower level light.

Mr. McKenna suggested that if the board approves the application, they could place a condition of submission of a lighting plan acceptable to the board, and they will bring the plan back to the board prior to memorialization of the resolution. Mr. Kniesler stated that Abbington can have the plan back to the board next month at the time the resolution is adopted.

Mr. Cranmer stated that a condition could be attached stating that the applicant must develop a **security lighting plan which is in full compliance with the current Ordinance.**

Mr. Forrester listed the conditions:

- Lighting Plan must be developed in accordance with the Ordinance within 90 days. If security lighting is not planned then the parking lot or site lights must be off between 7:00 pm and 7:00 am

A motion was made by Mr. Betesh, seconded by Mr. Walsh to open the meeting to the public. All approved.

Mr. Coughlin, 19 Buttonwood Drive, said if the lights are turned off he will be happy. Mr. Cranmer said that if the lights are not off at 7:00 pm the applicant will be issued a Zoning Violation.

Mr. McKenna stated that Mr. Cranmer's suggestion of a lighting plan and compliance with the Lighting Ordinance is the toughest standards, and his client is willing to make sure that the lights are off by 7:00 pm to 7:00 am and the only lighting that will be permitted after 7:00 pm will comply with the Ordinance Standards.

Mr. Betesh asked if it would be appropriate for the board to grant a conditional approval subject to coming back to the board with an approved lighting plan? Mr. Cranmer said that would be a minor site plan approval, since there isn't any opportunity for the public to come back to give any input.

Mr. McKenna said that his client would add a provision that the board has the right to accept public input prior to voting. Mr. McKenna said that he doesn't want to create a minor site plan approval, spend money on Lighting Plans and come back and not get the approval.

Mr. Cranmer asked the board if they feel that security lighting is an elemental part of this application or if the applicant turns the lights off at 7:00 pm and there wasn't any security light, would that change any ones view on the use variance? Members said no, security is the applicant's problem not the boards.

Mr. Cranmer suggested impose the hours of operation of the site lights (off from 7:00 pm to 7:00 am), with the condition that any alterations or security lighting must be in full compliance with the Zoning Ordinance.

Mr. Coughlin said that if the lights were not so offensive he would not be here, or if they were the same type of lights at the Fire House, the only thing he could do from now on is to call Zoning and complain about the lights, and his experience is not that good that the hours will be enforced. He would rather see the type of lights changed.

Mr. McKenna said that his client is willing to do anything the board wants, but he would like to resolve the problems with the neighbors, he feels that the lighting plan will satisfy the neighbors, and if they are doing the right thing they will be required to either shield the lights by retrofitting or in the alternative replace the fixture.

Mr. Cranmer suggested **“any lights that are on beyond 7:00 pm shall be considered security lighting and must be in compliance with the Ordinance, and in the event that the applicant wants to vary from any of the requirements they will be required to apply for site plan approval”**.

A motion was made by Mr. Betesh, seconded by Mr. Walsh to close the meeting to the public. All approved.

Mr. Forrester stated that the waiver for amended site plan & to grant a use variance to permit temporary outdoor storage on a year round basis as depicted in the exhibit presented subject to:

- Any removal or deviation as to what is depicted in the exhibit to the buffering if the use of the statuaries or urns changes the new owner would have to comply with the buffering requirements or make a new application to this board.
- Side yards on the north & south no statuaries would exceed the maximum height permitted for a fence (6')
- No storage in the front yard
- Storage/display would be integrated as part of the buffering
- Lighting must be extinguished form 7:00 pm to 7:00 am any lighting on after 7:00 pm will be considered security lighting and must comply with Section 94-8.22 Lighting Standards
- Number of statuaries are not to exceed the number shown on the plan
- Conditions listed in 1.9 a-f of Mr. Cranmer's review letter dated 9/2/08

A motion was made by Mr. Betesh, seconded by Mr. Dodge to approve the application of Nevada Exchange to allow the display/storage of ornamental lawn statuaries & similar items as set forth in the application, subject to:

- the conditions numerated by Mr. Forrester & Mr. Cranmer's review letter dated 9/2/08 **1.9 a-f**
- The perimeter lighting be extinguished between 7:00 pm to 7:00 am and any lighting that is on during that time shall be considered security lighting, must comply with the existing Lighting Ordinance requirements
- Additional landscaping buffering in the most eastern part of the parking lot
- Approval of site plan waiver for these changes.

Roll Call:

Affirmative: DeNofa, Walsh, Stambaugh, Betesh, Dodge, Waterbury

Negative: Peterson

### **Resolution 10/1/08.....**

A motion was made by Mr. Walsh, seconded by Mr. DeNofa to adjourn the meeting at 11:40 pm. All approved.